

OFFICE OF SMALL AND DISADVANTAGED BUSINESS UTILIZATION (00SB)

STANDARD OPERATING PROCEDURE

SUBCONTRACTING REQUIREMENTS

March 1, 1999

1. APPLYING THE SUBCONTRACTING REQUIREMENT

(a) A subcontracting plan must be obtained for the following contract actions:

- 1) New procurements estimated to exceed \$500,000, or \$1,000,000 for construction, which have subcontracting possibilities. The value of options and similar provisions must be included in determining whether the dollar value exceeds the threshold. Options must be included in the plan coverage with separate goals for the base period and each option. Contracts with businesses owned by a foreign company which operates from a location in the United States, non-profit or educational organizations, and state or local governments must include plans unless they are other exempt (see below).
- 2) Letter contracts must include a preliminary basic plan. A final plan must be negotiated within 90 days after award or before definitization, whichever occurs first.
- 3) Indefinite quantity/indefinite delivery and requirements contracts must contain plans if actual previous expenditures and/or internal estimates exceed the applicable threshold.
- 4) Contract modifications, sole source or otherwise, which exceed the \$500,000 or \$1,000,000 threshold themselves.
- 5) Subcontracting Plans are required for utilities, nonprofit and affiliated Universities.

(b) Subcontracting plans are not required:

- 1) From small business concerns
- 2) For personal services contracts;
- 3) For contracts or contract modifications when performed outside the United States.

2. DETERMINING THE NEED FOR A SUBCONTRACTING PLAN

Large businesses today frequently find that it is most cost effective to subcontract as much as possible, often preferring an outside contract to an interdivisional company transfer. Therefore, before determining that no subcontracting possibilities exist for a given contract, the contracting officer should request the prime contractor to submit a plan. If the contractor states that no subcontracting will occur, or submits a plan with zero goals, the contracting officer should verify this assertion by reviewing the cost proposal. Any supplies or services bought to support contract performance, including such indirect costs as building

maintenance, travel agency services, office supplies, etc., are considered to be subcontracting. However, it is preferable to use indirect costs to supplement direct costs rather than merely using indirect costs to establish a need for a subcontracting plan. A subcontracting plan shall not be required unless the indirect costs are substantial.

If it is determined that there are no subcontracting possibilities, the determination must be approved at a level above the contracting officer and placed in the contract files.

3. SMALL BUSINESS SPECIALIST

The contracting activity Small Business Specialist (SBS) shall assist the contracting officer in his/her evaluation of the subcontracting plan. The SBS will have the benefit of seeing all the subcontracting plans received at the activity, where an individual contracting officer may only see a few.

4. DIRECTOR, OFFICE OF SMALL & DISADVANTAGED BUSINESS UTILIZATION (OSDBU)

The OSDBU Director or designee shall review plans following their review by the contracting officer, SBS, and Small Business Administration (SBA) Procurement Center Representative (PCR) (if applicable) to ensure their compliance with policy and ensure that subcontracting program policies are consistently applied. OSDBU will have the benefit of seeing all plans submitted by contractors and be aware of their general compliance with individual plans and subcontracting programs in general.

5. SMALL BUSINESS ADMINISTRATION

The SBA's resident PCR must be provided an opportunity to review all proposed subcontracting plans submitted to facilities which have a PCR assigned. Advice on the contractor's compliance with the subcontracting program should also be sought from the SBA Commercial Marketing Representative (CMR) located in the geographic area closest to the headquarters of the prime contractor. The CMR specializes in evaluating subcontracting plans and programs.

6. DEFINITIONS

SUBCONTRACT: is any agreement (other than one involving an employer-employee relationship) entered into by a Government prime contractor or subcontractor for supplies and/or services required for performance of the contract, contract modification or subcontract. Some agreements for purchase of insurance, bonding and other general business services, and deposits in financial institutions are also considered subcontracts for the purpose of meeting subcontracting goals.

COMMERCIAL PLAN: means a subcontracting plan (including goals) that covers the offeror's fiscal year and that applies to the entire production of commercial items sold by either the entire company or a portion thereof (e.g., division, plant, or product line).

FAILURE TO MAKE A GOOD FAITH EFFORT TO COMPLY WITH THE SUBCONTRACTING PLAN: means willful or intentional failure to perform in accordance with the requirement of the subcontracting plan, or willful or intentional action to frustrate the plan.

COMMERCIAL ITEM: is any item, other than real property that is of a type customarily used for nongovernmental purposes and that has been sold, leased, or licensed to the general public or has been offered for sale, lease, or license to the general public.

INDIVIDUAL CONTRACT PLAN: is a plan that covers the entire contract period (including option periods), applies to a specific contract, and has goals that are based on the offeror's planned subcontracting in supports of the specific contract, except that indirect costs incurred for common or joint purposes may be allocated on a prorated basis to the contract.

MASTER PLANS: means a subcontracting plan that contains all the required elements of an individual contract plan, except goals, and may be incorporated into an individual contract plan, provided the master plan has been approved.

A master subcontracting plan contains the repetitive policy and administrative information required for subcontracting plans. Contractors may establish master plans on a plant or division-wide basis. The master plan shall be effective for a 3-year period after approval by the contracting officer; however, it is incumbent upon contractors to maintain and update master plans. The master plan does not include goals; therefore, when it is presented by a prime contractor, the contracting officer must negotiate separate dollar and percentage goals for small business, small disadvantaged business, women-owned small business and HUBZone small business concerns participation. A listing of the items and services to be subcontracted under the plan; and descriptions of the method use to develop the goals, to develop subcontracting source lists and to allocate the overhead to the subcontracting plan must also be obtained. The contracting officer may negotiate any deviations from the master plans that are necessary to tailor it for a specific contract.

When a master plan is accepted, the contracting officer must also obtain a copy of the lead agency contracting officer's approval of the master plan. (A lead agency is the first Federal agency to award a contract to a vendor in a given fiscal year). After goals are negotiated and combined with the master plan to form a total plan, it becomes an "individual" subcontracting plan. Once incorporated into the individual contract, the plan is valid for the life of that contract.

7. THE REQUIRED ELEMENTS OF A SUBCONTRACTING PLAN

- (a) A subcontracting plan must be obtained from the apparent successful offeror prior to contract award, whether sealed bidding or negotiation awards the contract. A plan shall be requested from all offerors and evaluated for award points if the evaluation criteria so provide. The time period for submission is established by the contracting officer, but must allow sufficient time for review, negotiation, and approval prior to the anticipated contract award date. Ten working days are usually sufficient time to allow for review and approval of the subcontracting plan. Negotiations of questioned items of the subcontracting plan may take longer. The OSDBU office is available to assist in any manner and to provide informational goals. Each subcontracting plan required must include--

- 1) **PERCENTAGE GOALS:** Separate percentage goals for using small business, small disadvantaged business, women-owned small business and HUBZone small business concerns.

- 2) DOLLARS TO BE SUBCONTRACTED: A statement of the total dollars planned to be subcontracted and a statement of the total dollars planned to be subcontracted to small business, small disadvantaged business, women-owned small business and HUBZone small business concerns.
- 3) DESCRIPTION OF SUPPLIES AND SERVICES: The plan must describe all of the supplies and services to be subcontracted with source, business size (i.e., small business, small disadvantaged business, women-owned small business and HUBZone small business concerns) and estimated dollar expenditure to be subcontracted under the contract.
- 4) METHOD USED TO DEVELOP GOALS: The plan must describe the method used to develop the proposed subcontracting goals for small business, small disadvantaged business, women-owned small business and HUBZone small business concerns. A mere statement that the goals are based on "historical trends" is not sufficient, since the subcontracting objective is to increase opportunities for small business, small disadvantaged business, women-owned small business and HUBZone small business concerns subcontracting.
- 5) IDENTIFICATION OF SOURCES: The plan must describe how the contractor identifies potential sources to receive solicitations for subcontracts. For example, the contractor may use company source lists, small business, small disadvantaged business, women-owned small business and HUBZone small business concerns source information provided from SBA's Pro-Net database, the Minority Business Development Agency's Phoenix database, the National Minority Supplier Development Council's vendor information service and/or the facilities of local minority organizations and associations.
- 6) INDIRECT COSTS: If overhead or indirect costs are included in the goals, the plan must describe the method used to determine the proportionate share of those costs incurred with small business, small disadvantaged business, women-owned small business and HUBZone small business concerns that will be allocated to the specific contract or plan.
- 7) PLAN ADMINISTRATOR: The contractor must furnish the name, title, address, and telephone number of the contractor's employee who will administer the company's subcontracting program. If available, the contractor should provide an organization chart showing the Plan Administrator's position within the corporate structure.

The plan must also include a description of the duties of the administrator as relates to the subcontracting program. Those duties should include, as a minimum:

- (a) Developing and promoting company/division policy statements that demonstrate the company's/division's support for awarding contracts and subcontracts to small business, small disadvantaged business, women-owned small business and HUBZone small business concerns;
- (b) Developing and maintaining bidders lists of small business, small disadvantaged business, women-owned small business and HUBZone small business concerns from all possible sources;

- (c) Ensuring periodic rotation of potential subcontractors on bidders lists;
- (d) Assuring that small business, small disadvantaged business, women-owned small business and HUBZone small business concerns are included on the bidders list for every subcontract solicitation for products and services they are capable of providing;
- (e) Ensuring that subcontract procurement "packages" are designed to permit the maximum possible participation of small business, small disadvantaged business, women-owned small business and HUBZone small business concerns;
- (f) Reviewing subcontract solicitations to remove statements, clauses, etc., which might tend to restrict or prohibit small business, small disadvantaged business, women-owned small business and HUBZone small business concerns participation;
- (g) Ensuring that the subcontract bid proposal review board documents its reasons for not selecting any low bids submitted by small business, small disadvantaged business, women-owned small business and HUBZone small business concerns;
- (h) Overseeing the establishment and maintenance of contract and subcontract award records;
- (i) Attending or arranging for the attendance of company counselors at Business Opportunity Workshops, Minority Business Enterprise Seminars, Trade Fairs, Seminars, etc.;
- (j) Directly or indirectly counseling small business, small disadvantaged business, women-owned small business and HUBZone small business concerns on subcontracting opportunities and how to prepare responsive bids to that company;
- (k) Providing notice to subcontractors concerning penalties for misrepresentations of business status as small business, small disadvantaged business, women-owned small business and HUBZone small business concerns for the purpose of obtaining a subcontract that is to be included as part or all of a goal contained in the contractor's subcontracting plan;
- (l) Conducting or arranging training for purchasing personnel regarding the intent and impact of the subcontracting program on purchasing procedures;
- (m) Developing and maintaining an incentive program for buyers which supports the subcontracting program;
- (n) Monitoring the company's performance and making any adjustments necessary to achieve the subcontract plan goals;
- (o) Preparing and submitting timely reports;

* Coordinating the company's activities during compliance reviews by Federal Agencies

- 8) EFFORTS TO ENSURE EQUITABLE OPPORTUNITY: The plan must include a description of efforts the contractor will make to ensure that small business, small disadvantaged business, women-owned small business and HUBZone small business concerns will have an equitable opportunity to compete for subcontracts. This should include information concerning:
- (a) Company - Wide Policy Statements. It is very important that top management (preferably the chief executive officer of the company) issue a policy statement to delineate the proper levels of responsibility for implementing the company's subcontracting program. The policy statement should be directed to all personnel who are able to implement the policy, including technical personnel. A policy statement, which places the total responsibility with the individual to administer the plan, is not adequate.
 - (b) Management Interest and Involvement. How does top management monitor progress toward meeting goals? Are there regular "feed-back" briefings? Are there corporate-wide and divisional goals? The involvement of top management in the achievement of the plan and company programs to assist small business, small disadvantaged business, women-owned small business and HUBZone small business concerns should be visible and apparent to all personnel in the organization.
 - (c) Personnel Motivation and Training. A procedure should be established for a specific program of training personnel involved in the contractor's acquisition process. A procedure should also be established for a program to recognize or reward outstanding performance in implementing the company's subcontracting programs. Innovative performance awards will eliminate the status quo by serving as an incentive to personnel to support small business, small disadvantaged business, women-owned small business and HUBZone small business concerns subcontracting efforts.
 - (d) Publicizing Subcontracting Opportunities.
 - 1) Contracting officers shall encourage prime contractors and subcontractors to use the Commerce Business Daily (CBD) to publicize subcontracting opportunities stemming from their Government business. Subcontract information should be mailed directly to the CBD under the heading "Subcontracting assistance wanted."
 - 2) In order to ensure maximum subcontracting opportunities, the cognizant contracting officer shall provide copies of solicitation mailing lists (not the list of offerors) to small business, small disadvantaged business, women-owned small business and HUBZone small business concerns upon request. It is not necessary for this request to be submitted using the procedures required by the Freedom of Information Act.
 - (e) Special Assistance. Special assistance should be given to small, small disadvantaged, women owned small business and HUBZone small business concerns by arranging solicitations, time for preparation of bids, quantities, specifications, and delivery schedules to facilitate their participation. Examples of special assistance to look for, which have proven to be effective in increasing subcontract awards for small business, small disadvantaged business, women-owned small business and HUBZone small business concerns, include outreach efforts to locate and qualify sources, follow-up efforts to

determine why small business, small disadvantaged business, women-owned small business and HUBZone small business concerns did not respond to solicitations or were not successful, and establishing organizational elements to provide special management, technical and financial assistance.

- (f) Counsel and Discuss Subcontracting Opportunities. In addition to responding to inquiries as they occur, contractors can actively participate in counseling activities sponsored by business and governmental groups and take part in various organizations dedicated to increasing small business, small disadvantaged business, women-owned small business and HUBZone small business concerns participation in governmental contracting, e.g., local minority business opportunity councils. The contractor should describe its activities.
- (g) Set-Aside Programs. Prime contractors may establish internal competitive small business, small disadvantaged business, women-owned small business and HUBZone small business concerns set aside programs to ensure that a fair proportion of their subcontracts are awarded to those concerns.

9) BEST EFFORTS (FLOW DOWN)

- (a) The plan must provide assurances that the clause at FAR 52.219-8, "Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns" (the "Best Efforts" clause) will be included in all subcontracts which offer further subcontracting opportunities.
- (b) Lower-Tier Subcontracting Plans. The plan must also provide assurances that all subcontractors, except small businesses, who receive subcontracts over the applicable threshold, will adopt similar subcontracting plans. The prime contractor must evaluate the plan, monitor the subcontractor's performance, and ensure that the subcontractors submit Standard Form (SF) 294 and 295 reports.

10) REPORTING AND COOPERATION

- (a) The contractor must assure that it will cooperate in studies or surveys that may be required by VA or SBA to determine its compliance with the subcontracting plan or the quality of its overall subcontracting program.
- (b) The contractor must agree to submit, and ensure that its subcontractors submit, the following required reports in accordance with the instructions on the forms:
 - 1) Semi-annual SF 294 and an annual 295 to the contracting officer and to the OSDBU office for those contractors with individual plans or master plans with individual goals. The SF 294 reports are due 30 days after the close of the reporting period, that is, April 30 and October 30. The SF 295 is also due October 30th.
 - 2) Annual SF 295 to contracting officer and the OSBU office for those contractors with commercial plans. The SF 295 shall include a breakout of VA's portion of its total subcontracting. The report is due by October 30th

11) RECORDKEEPING: The contractor must maintain and describe in the plan the type of records necessary to document the methods by which it intends to meet the goals and carry out the requirements of the plan. The records must include:

- (a) Small business, small disadvantaged business, women-owned small business and HUBZone small business concerns source lists, guides, and other data used to identify such vendors;
- (b) Organizations contacted to locate small business, small disadvantaged business, women-owned small business and HUBZone small business concerns;
- (c) For each contract, on subcontract solicitations over \$100,000 whether small business, small disadvantaged business, women-owned small business and HUBZone small business concerns were solicited, and if not, why not;
- (d) Outreach efforts to develop sources, i.e., contacts with small business, small disadvantaged business, women-owned small business and HUBZone small business concerns trade associations and business development organizations, attendance at small business, small disadvantaged business, women-owned small business and HUBZone small business concerns procurement conferences and trade fairs;
- (e) Internal activities to guide and encourage purchasing personnel (workshops, seminars, training programs, incentive awards) and to monitor activities to evaluate compliance; and
- (f) On a contract-by-contract basis, the name, address, business size and ownership status (i.e., small business, small disadvantaged business, women-owned small business and HUBZone small business concerns, etc.) of each subcontractor receiving an award. This item is not required for company or division-wide commercial plans.

8. METHOD FOR CALCULATING GOALS

The correct methodology for calculating percentage and dollar goals for subcontracting under contracts required to have a subcontracting plan is listed below. As detailed in the subcontracting plan clause, FAR 52.219-9, contractors must include the following goal data in each plan submitted:

- (a) Total dollars to be subcontracted;
- (b) The dollar amount and percentage of the total planned to be awarded to all small business concerns;
- (c) The dollar amount and percentage of the total planned to be awarded to small disadvantaged business concerns;
- (d) The dollar amount and percentage of the total planned to be awarded to women-owned small business concerns; and

- (e) The dollar amount and percentage of the total planned to be awarded to HUBZones small business concerns.

The fact that the small disadvantaged business, women-owned small business and HUBZone small business concerns goals are a subset of the small business goals seems to be a major source of confusion. The goals listed below are the statutory minimum goals.

	<u>DOLLARS</u>	<u>PERCENT</u>
Total Contract Price	\$1,500,000	
Total to be Subcontracted	1,000,000	100
Subcontract to Small Business	230,000	23
Subcontract to Small Disadvantaged Business	50,000	5
Subcontract to Women-Owned Small Business	50,000	5
Subcontract to HUBZone Small Businesses	10,000	1

Goals in individual plans for multiyear contracts, or contracts with options to extend the period of performance, may be established for a period less than the full term of the contract (including options) when it is impractical to establish goals for the full term. However, the plan must include a schedule for establishing goals for the balance of the term of the contract and must establish separate goals for each option.

- ❖ The total amount to be subcontracted:

\$ _____

- ❖ Total dollars to be subcontracted to small business:

\$ _____ %

- ❖ Total dollars to be subcontracted to small disadvantaged business:

\$ _____ %

- ❖ Total dollars to be subcontracted to women-owned small business:

\$ _____ %

- ❖ Total dollars to be subcontracted to HUBZone small business concerns:

\$ _____ %

The total dollar volume of planned subcontracting, total dollar volume of expected awards to small, small disadvantaged, women-owned small business concerns as well as HUBZone small business concerns are required for the base period and each option. The contractor may include a proportionate share of supplies and services whose costs are normally allocated as indirect or overhead costs, when reasonably determined to be allocated to the contract.

9. EVALUATING THE SUBCONTRACTING PLAN

The contracting officer must:

- 1) Review the plan to ensure that it is complete and contains all the information described herein;
- 2) Obtain advice and recommendations about the acceptability of the plan from SBA PCR and the OSDDBU;
- 3) Evaluate the potential for small business, small disadvantaged business, women-owned small business and HUBZone small business concerns subcontracting based on all available information, including the apparent successful offeror's previous achievements. Previous involvement of small business, small disadvantaged business, women-owned small business and HUBZone small business concerns, as prime or subcontractors in similar acquisitions should be considered. The contractor can be requested to provide such data regarding its small business, small disadvantaged business, women-owned small business and HUBZone small business concerns subcontracting on similar acquisitions. If a follow-on acquisition is involved, good data can be expected to be available. Any previous data on similar prime contract awards should be considered;
- 4) In the case of negotiated procurements, establish subcontract goals which represent good faith, and aggressive and comprehensive effort on the part of the apparent successful offeror;
- 5) Determine whether the plan provides the maximum practicable opportunity for small business, small disadvantaged business, women-owned small business and HUBZone small business concerns to participate in the performance of the contract;
- 6) In the case of unacceptable plans for negotiated contracts, advise the contractor in writing why a subcontracting plan was determined to be unacceptable. This should be done as quickly as possible so the contractor can modify the plan within the time limits prescribed. The contractor should be advised how it can make the plan acceptable, i.e., by the use of additional source systems or by establishing more aggressive goals;
- 7) In sealed bid procurements, if a submitted plan is responsive (complete), but shows the bidder's "intention not to comply with its obligations under the "Best Efforts" clause at FAR 52.219-8 (that is, give its best efforts to award subcontracts to small business, small disadvantaged business, women-owned small business and HUBZone small business concerns to the fullest extent consistent with the efficient performance of the contract), then the bidder may be found nonresponsive, and
- 8) In negotiated contracts, determine whether an incentive provision, as set forth in FAR 52.219-10, should be used in accordance with FAR 19.705-1. If so, structure an appropriate clause. Incentive provisions should normally be negotiated after reaching agreement on the basic subcontracting plan.

- 9) Determine whether small business, small disadvantaged business, women-owned small business and HUBZone small business concerns previously performed this or similar acquisitions as a prime or subcontractor?

10. EVALUATION GUIDELINES

This section provides general guidance to contracting officers awarding and administering contracts concerning their responsibilities in determining if a contractor's proposed subcontracting plan for small business, small disadvantaged business, women-owned small business and HUBZone small business concerns fulfills the requirements of the FAR. There are no detailed standards, which are applicable to every situation. However, the following should be helpful for evaluating subcontracting plans.

In sealed bid contracts, the contracting officer must determine the adequacy of the subcontracting plan. It must include the 11 elements required by the FAR and conform to the general policy that small business, small disadvantaged business, women-owned small business and HUBZone small business concerns shall have the maximum practicable opportunity to participate as subcontractors.

In negotiated contracts, the subcontracting plan must, in the contracting officer's judgment, provide the maximum practicable opportunity for small, small disadvantaged, women-owned, and HUBZones small business concerns to participate in the performance of the contract.

In no case are "zero" goals acceptable. Statutory goals of 23 percent small business, 5 percent small disadvantaged business, 5 percent women-owned small business, and HUBZone small business goals of 1 percent in FY 1999, 2 percent in FY 2000 and 3 percent in FY 2001 should be minimum targets.

11. CONTRACTOR RESPONSIBILITY

Before determining the responsibility of an offeror on a contract requiring a subcontracting plan, the contracting officer shall review the offeror's compliance with previous subcontracting plans, if any approved by that contracting office. The review must include the contractor's performance in submitting subcontracting reports in a timely manner. Failure to submit a plan, which shows good faith effort to use small business, small disadvantaged business, women-owned small business and HUBZone small business concerns, must be a factor in determining responsibility.

12. POST-AWARD ACTION

(A) SYNOPSIS

The contracting officer should:

- (a) Indicate in the award synopsis that a contract includes a subcontracting plan, and provide the address and telephone number of the subcontracting plan administrator. The contracting officer should encourage prime contractors and subcontractors to publicize subcontracting opportunities in the Commerce Business Daily.
- (b) Notifying the SBA of the award by sending a copy of the award document to the Assistant Regional Administrator for Procurement Assistance in the SBA region where the contract will be performed;

- (c) Forwarding a copy of each plan and any associated approvals to the Assistant Regional Administrator for Procurement Assistance in the SBA region where the contractor's headquarters is located;
- (d) Give the assigned SBA Resident Procurement Center Representative a copy of the plan.

(B) PROCEDURES FOR DELINQUENT REPORTS

Contractors who fail to submit SF 294 and SF 295 reports within 10 calendar days of the due date must be reminded in writing that the report is past due. Contractors who do not respond to the first notice shall be issued a second written notice by certified mail, which must contain the following information:

- (a) A statement that the named report has not been received;
- (b) A statement that failure to submit the report is a material breach of the contract;
- (c) A statement that if the report is not received within 10 calendar days from the date of the notice, the contracting officer will consider withholding payments as deemed appropriate under the circumstances until the report is received, and may terminate the contract for default;
- (d) A reminder that failure to submit the report may affect the contractor's ability to receive future awards from VA and that willful failure to perform or a history of failure to perform may result in debarment from future contracting with the Government; and
- (e) The address of the contracting officer to whom the report must be sent.

Copies of delinquent reports concerning SF 294 or SF 295 reports shall be sent to the Small Business Specialist.

13. FINAL PERFORMANCE ASSESSMENTS

Upon contract completion, the contracting officer shall submit a report documenting and evaluating the contractor's performance under the subcontracting plan.

The report should include (1) the extent to which the goals were met, (2) whether the contractor's efforts were consistent with the effort proposed in the plan, and (3) whether the contractor required its subcontractors to adopt similar subcontract plans. If the contractor did not comply in good faith with the subcontracting plan, the contracting officer shall document the noncompliance in writing, include the recommendations, and make appropriate recommendations that contracting officers may use for future contracts.

Before determining that a contractor's failure to achieve the subcontracting goals was occasioned by bad faith, the contracting officer must analyze the explanations required of the subcontractor and the criteria set forth in the subcontracting plan to establish what constitutes a "good faith effort."

14. CONTRACTING OFFICER DUTIES

If the contractor fails to implement the plan, which is a material breach of the contract, the contracting officer may:

- (a) Terminate the contract for default;
- (b) Withhold payments;
- (c) Negotiate a reduction in the contract price;
- (d) Negotiate a revised plan to correct deficiencies; and
- (e) Initiate action to assess liquidated damages against the contractor. Liquidated damages will be equal to 100 percent of the amount by which the contractor failed to meet its goal, and are payable to the procuring agency.

15. LIQUIDATED DAMAGES

Maximum practicable utilization for small business, small disadvantaged business, women-owned small business and HUBZone small business concerns as subcontractors in Government contracts is a matter of national interest with both social and economic benefits. When a contractor fails to make a good faith effort to comply with a subcontracting plan, these objectives are not achieved, and 15 U.S.C. 637(d)(4)(F) directs that liquidated damages shall be paid by the contractor. The amount of damages attributable to the contractor's failure to comply shall be an amount equal to the actual dollar amount by which the contractor failed to achieve each subcontracting goal.

If the contracting officer decides that the contractor failed to make a good faith effort to comply with its subcontracting plan, then the contracting officer shall give the contractor written notice specifying the failure, advising the contractor of the possibility that the contractor may have to pay to the Government liquidated damages, and providing a period of 15 working days (or longer period as necessary) within which to respond. The notice shall give the contractor an opportunity to demonstrate what good faith efforts have been made before the contracting officer issues the final decision, and shall further state that failure of the contractor to response may be taken as a admission that no valid explanation exists.

16. STEPS FOR REPORTING SUBCONTRACTING INFORMATION

- (a) You need a valid Austin User ID with functional task code 190AA07
- (b) If you already have access to FPDS Connect, no further access is required. If you do not have access to FPDS Connect, e-mail your Austin User ID to Kathy Kilgore in Austin and Lisa Russell in OSDBU. They will provide you with a password and log on instructions. The icon for the program is labeled Production Subcontracting - SF 295.
- (c) You must inform your contractors to submit their SF 295/294 promptly and correctly by COB October 30th.

- (d) The data is entered into the database once a year from the October SF 294/295 reports. The system will be available for data input October 1 to December 31.
- (e) You must also inform them to make sure that they breakout VA's portion. On the SF 295 there is a block that states (If plan is a commercial plan, specify the percentage of the dollars on this report attributable to this agency), but in order for you to enter the information for the VA you need to inform the contractor that in blocks 10a, 10b, 10c, 11, 12, 13, 14 they also need to have a percentage of what is attributable to this agency.

17. SPECIFIC REPORTING INSTRUCTIONS

Now that you have all your access codes and the information from your contractor, you are ready to enter your data. Attached are the Summary Subcontract Reporting Instructions.

SUBCONTRACTING PLAN - SUMMARY CHECKLIST

DATE PLAN SUBMITTED: _____
CONTRACTOR'S NAME: _____
CONTRACT/SOLICITATION NUMBER: _____
CONTRACTING OFFICER/SPECIALIST: _____
LOCATION: _____
CONTRACTING OFFICER WHO APPROVED PLAN: _____
PCR WHO APPROVED PLAN: _____
DATE APPROVED: _____
TOTAL CONTRACT VALUE (INCLUDING OPTIONS): \$ _____

TYPE OF PLAN (CHECK ONE):

_____ COMMERCIAL PLAN	PERFORMANCE/EFFECTIVE DATES: _____
_____ INDIVIDUAL CONTRACT PLAN	PERFORMANCE/EFFECTIVE DATES: _____
_____ MASTER PLAN	PERFORMANCE/EFFECTIVE DATES: _____

1. Does the plan show total dollars to be subcontracted?

_____ YES _____ NO Amount \$ _____

2. Are there separate percentage goals for small, small disadvantaged, women-owned small business and HUBZones concerns as subcontractors?

_____ YES _____ NO

What are the goals and do you agree?

YES **NO**

SMALL BUSINESS:	\$ _____	_____ %	_____	_____
SMALL DISADVANTAGED BUSINESS	\$ _____	_____ %	_____	_____
WOMEN-OWNED SMALL BUSINESS	\$ _____	_____ %	_____	_____
HUBZONE	\$ _____	_____ %	_____	_____

3. Is there a description of the principal types of supplies and services to be subcontracted, and an identification of the types planned for subcontracting to:

SMALL BUSINESS	_____ YES	_____ NO
SMALL DISADVANTAGED BUSINESS	_____ YES	_____ NO
WOMEN-OWNED SMALL BUSINESS	_____ YES	_____ NO
HUBZONE	_____ YES	_____ NO

4. Is there a description of the method used to develop the subcontracting goals.

_____ YES _____ NO

5. Is there a description of the method used to identify potential sources for solicitation purposes (e.g. Pro-Net, National Minority Purchasing Council Vendor Information Services, etc.?

____YES ____NO

6. Is there a statement as to whether they included indirect costs in establishing subcontracting goals and a description of the method used to determine the proportionate share of indirect costs to be incurred with small, small disadvantaged, women-owned small business and HUBZone concerns?

____YES ____NO

7. (a) Does the plan have the name of an individual who will administer the subcontracting program included?

____YES ____NO

(b) Is there a description of the duties of that individual included?

____YES ____NO

8. Does the plan include a description of the efforts to ensure that small business, small disadvantaged business, women-owned small business and HUB Zone concerns will have a equitable opportunity to compete for subcontracts?

____YES ____NO

9. Does the plan include assurances that lower tier subcontractors will comply with the clause at 52.219-9 requiring further subcontracting opportunities?

____YES ____NO

10. (a) Does the plan have assurances that the firm will cooperate in any studies or surveys as may be required?

____YES ____NO

(b) Agree to submit periodic reports in order to allow the Government to determine the extent of compliance by the contractor with the subcontracting plan?

____YES ____NO

(c) Does the plan indicate that they will submit SF 294's 295's in accordance with the instructions on the forms as well as to ensure that its subcontractors agree to submit the SF 294's and 295's?

____YES ____NO

11. (a) Does the plan indicate agreement to maintain the minimum amount of records to document compliance and a description of the records including establishing source lists, organizations contacted; and a description of the efforts to locate small, small disadvantaged, women-owned small business and HUBZone concerns and to award subcontracts to them?

____YES ____NO

(b) As well as their outreach efforts (trade associations, organizations, conferences, workshops, and seminars)?

____YES ____NO

(c) Whether small, small disadvantaged, women-owned small business and HUBZone concerns were solicited for any subcontracting opportunity over \$100,000 and if not, why not?

____YES ____NO